INDEX

Introduction 1

Opinions and Orders Below 2

Jurisdiction, Question Presented, and Statutory Provisions Involved 2

Supplemental Statement of the Case 3

Further Reasons for Granting the Writ 3

Conclusion 8

CITATIONS

Cases:	Page
Alexander v *Holmes County Board of Education*, 396 US 19 (1969)	6
Bradley et al v *School Board of the City of Richmond*, 338 F Supp 67 (1972), reversed____F2d____(June 5, 1972, CA 4)	1,7,8
Goss v *Board of Education of the City of Knoxville*, 444 F2d 632 (CA 6, 1971)	6
Swann v *Charlotte-Mecklenburg Board of Education*, 402 US 1 (1971)	4,6

IN THE
SUPREME COURT FOR THE UNITED STATES
October Term 1971
No. 71-1463

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al,

Petitioners,

-vs.-

RONALD BRADLEY, et al,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS SCHOOL DISTRICTS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INTRODUCTION

Under date of June 5, 1972, Respondents filed with this Court the Brief of Respondents School Districts In Support Of Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit. Since the filing of said brief two highly significant and pertinent developments have occurred which Respondents believe should be considered by this Court in connection with the Petition For Writ Of Certiorari.

On June 5, 1972, the Court of Appeals for the Fourth Circuit, sitting *en banc*, ruled that a United States District Court could not compel the transfer and bussing of pupils between three (3) independent school districts for the purpose of achieving racial balance in the assignment of pupils to the public schools, absent invidious discrimination in the establishment or maintenance of the respective school districts, and in a 5 to 1 decision reversed the decision in *Bradley et al* v *School Board of the City of Richmond*, 338 F Supp 67 (1972), reversed ___F2d___(June 5, 1972, CA4).

On June 14, 1972, the District Court in the instant case issued a Ruling On Desegregation Area and Order for Development of Plan of Desegregation together with Findings of Fact and Conclusions of Law In Support of Ruling On Desegregation Area and Development of Plan. The Order of the District Court directly and immediately affects approximately 800,000 pupils in fifty-two (52) independent school districts located in three (3) different counties surrounding the City of Detroit. [1] Moreover, in a completely irrational rush to judgment, the District Court has directed that within a mere forty-five (45) days a plan must be developed for the transportation and assignment of students for all schools and all grades in fifty-two (52) school districts.

OPINIONS AND ORDERS BELOW

The Opinions issued by the District Court prior to June 14, 1972, are set forth in the appendix to the Petition For Writ of Certiorari previously filed with the Court and reference thereto is made in Respondents' initial brief filed herein.

As noted above, the District Court on June 14, 1972, issued (i) Ruling On Desegregation Area and Order for Development of Plan of Desegregation [2] (hereinafter called "Ruling and Order), and (ii) Findings of Fact and Conclusions of Law In Support of Ruling On Desegregation Area and Development of Plan [3] (hereinafter called "Findings and Conclusions").

JURISDICTION, QUESTION PRESENTED, AND STATUTORY PROVISIONS INVOLVED.

The statements as to Jurisdiction, Question Presented and Statutory Provisions involved are set forth at pages 1 through 3 of the Brief of Respondents previously filed with the Court.

[1] Although there are fifty-three (53) school districts named in the Ruling and Order (Supplemental Joint Appendix, page 43aa), two of the districts, Dearborn and Fairlane, have merged into one district.

[2] Supplemental Joint Appendix, page 39aa.

[3] Supplemental Joint Appendix, page 1aa.

SUPPLEMENTAL STATEMENT OF THE CASE.

In addition to the matters set forth in Respondents initial Brief to this Court. Respondents incorporate herein by reference the Ruling and Order and Findings and Conclusions issued by the District Court on June 14, 1972, as a supplemental statement of the case.[4]

FURTHER REASONS FOR GRANTING THE WRIT

In accord with Rules 24(5) and 41(5) of the Supreme Court Rules, the undersigned Respondents School Districts submit herein certain cogent matters which have intervened subsequent to the preparation and filing of their initial Brief In Support of Petition for Certiorari.

On June 14, 1972, the District Court issued a Ruling and Order directing that a plan of desegregation be implemented effecting a racial balance in all grades and schools in at least fifty-two (52) geographically and politically independent school districts.[5] The Order of the District Court is unprecedented not only in terms of its scope but also in the fact that there is no claim or judicial finding that any school district, except the City of Detroit, has been established or maintained so as to exclude or separate pupils on the basis of race. The District Court candidly admits that –

> ". . . . It should be noted that the court has taken no proofs with respect to the establishment of the boundaries of the 86 public school districts in the counties of Wayne, Oakland and Macomb, nor on the issue of whether, with the exclusion of the city of Detroit school district, such

[4] Ibid.

[5] Supplemental Appendix, pages 42aa and 43aa.

> school districts have committed acts of de jure segregation."[6]

The District Court has apparently thus concluded that its remedial powers are as broad as its own conception of desirable social reform without regard to any findings of impairment of constitutional rights. The remedy decreed by the District Court cannot be reconciled with this Court's pronouncement in *Swann* v *Charlotte-Mecklenburg Board of Education*, 402 US 1, 16 (1971), as follows:

> ". . . . it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation . . . . As with any equity case, the nature of the violation determines the scope of the remedy . . . ."

The nature of the violation found by the District Court is that a single, solitary school district, the City of Detroit, failed to maintain a unitary school system and that such action was countenanced by executive officers of the State of Michigan. There is admittedly no claim that the asserted unconstitutional actions relative to the Detroit school system in any way permeated any one of the fifty-two (52) school districts selected by the District Court for inclusion in its remedy. Here, the scope of the remedy is predicated solely upon judicial inventiveness.

The Ruling and Order of the District Court is utterly incredible and patently demonstrates the imperative public importance of this case and the compelling need for this Court to exercise its jurisdiction without awaiting an intermediate ruling from the Court of Appeals. In this regard, the Court's attention is directed hereinafter to just a few of the District Court's directives which portend major disruptive consequences to fifty-two (52) school districts and approximately 800,000 children and their parents.

[6] Supplemental Appendix, pages 1aa-2aa.

The City of Detroit school district embraces 276,934 pupils (Supplemental Joint Appendix, pages 49aa-52aa). The fifty-two (52) suburban school districts included in the District Court's desegregation plan have 503,178 pupils (Supplemental Joint Appendix, pages 49aa-52aa). The District Court created a nine (9) member panel to prepare a plan of desegregation, which panel includes four (4) persons associated with the City of Detroit School District and only one (1) person to represent the other fifty-two (52) school districts and 503,178 pupils to be affected by such plan (Supplemental Joint Appendix, page 41aa).

This case was commenced in August, 1970, and has been before the District Court for almost two (2) years. The trial on the merits was limited to the issue of whether the City of Detroit school district had failed to maintain a unitary school system. The initial ruling of the Court found only that the City of Detroit school system was a *de jure* segregated school system (Appendix to Petition For Writ of Certiorari, pages 1a-27a). The Respondents School Districts intervened in the case on March 15, 1972, and nineteen (19) of the school districts subjected to the District Court's ruling have never been party to this case in any capacity. Despite the foregoing facts, the District Court has directed that within forty-five (45) days from the date of its Ruling and Order, a desegregation plan, including a transportation plan, must be finalized (Supplemental Joint Appendix, page 42aa) and may be implemented "now, i.e. . . . for the 1972 fall term" (Supplemental Joint Appendix, page 24aa). Moreover, the District Court has frankly conceded that there is no ruling from this Court on the issue of whether independent school districts, with respect to which there are no findings of acts of segregation, may be included in a desegregation remedy (Appendix to Petition For Writ Of Certiorari, page 34a). The following statement of the Court of Appeals for the Sixth Circuit is apropos to the instant case and emphasizes the urgent need for this Court to review this case now.

> "Therefore, if it has taken the federal judiciary of this country 17 years to come up with final answers, it would

be judicially arrogant for us to tell the school authorities . . . to get the job done in the few months that will be available before the opening of the 1971 fall session . . .

"The hope or dream, that one day we will have become a people without any motivation born of our different racial beginnings will have a better chance of fulfillment if patience accompanies our endeavors. Strident and truculent judicial commands could indeed exacerbate what may now remain of racial bias and prejudice." *Goss* v *Board of Education of the City of Knoxville*, 444 F2d 632, 639-640 (CA 6, 1971).

The situation here involved is not like that posed in *Alexander* v *Holmes County Board of Education*, 396 US 19 (1969) where the Court decreed that continued operation of racially segregated schools must be terminated "at once" rather than with "all deliberate speed". Fifty-two (52) of the school districts here involved have not even been afforded a judicial hearing and there is no finding that they have failed to maintain a unitary school system or that the State of Michigan has fostered or maintained a dual school system.

In *Swann* v *Charlotte- Mecklenburg Board of Education*, 402 US 1 (1971) this Court noted that the constitutional duty to desegregate and maintain a unitary school system does not require racial balancing or mixing, stating:

". . . If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. . . ." *Swann, supra*, at page 24.

In the instant case the District Court, after finding the City of Detroit School system to be *de jure* segregated, arbitrarily selected fifty-two (52) independent school districts to be included in a desegregation plan calling for a racial balance relatively proportionate to the overall pupil racial composition in the districts involved.

"Within the limitations of reasonable travel time and distance factors, pupil reassignments shall be effected within the clusters described in Exhibit P.M. 12[7] so as to achieve the greatest degree of actual desegregation *to the end that, upon implementation, no school, grade, or classroom by [be] substantially disproportionate to the overall racial composition.* . . ." Supplemental Joint Appendix, pages 43aa-44aa. [Emphasis added.]

The Order of the District Court portends the reassignment of pupils between the fifty-three (53) school districts for the 1972 fall term (Supplemental Joint Appendix, page 24aa), less than 90 days from the date of this brief. It is respectfully submitted that the unprecedented remedy here involved, which is principally founded upon the judicial inventiveness of one man, should be reviewed by this Court now.

Since the filing of Respondents' initial brief in this case, the Court of Appeals for the Fourth Circuit reversed the District Court's decision in *Bradley et al* v *School Board of the City of Richmond*, 338 F Supp 67 (1972), ___ F2d ___ (CA 4, June 5, 1972) calling for the forced assignment of pupils between three (3) school districts in order to effect a racial balance in the public schools. The District Court in this case previously placed strong reliance on the lower court's opinion in *Bradley* v *Richmond* (Appendix to Petition For Writ Of Certiorari, page 41a-42a).

The Court of Appeals in *Bradley* v *Richmond, supra*, stated that where geographically and politically independent school districts have not been established or maintained with the intent of circumventing any federally protected right, a State's right to structure its own internal government is absolute. Here the District Court has conceded that there is no evidence that the school districts embraced within its Order were established to circumvent any federally protected right and no evidence that any of the fifty-three (53) school districts,

[7] Supplemental Joint Appendix, pages 48aa-52aa.

except Detroit, have defaulted in their constitutional obligation to maintain a unitary school system (Supplemental Joint Appendix, pages 1aa-2aa).

The underlying premise for the Order of the District Court is its determination that even if the City of Detroit school district was operated on a unitary basis, the student population would be predominantly black and therefore the Court is empowered to use its remedial powers to effect a racial balance. The Fourth Circuit Court of Appeals expressly rejected such rationale, stating:

> "... there is no right to a racial balance within even a single school district, *Swann* v *Charlotte-Mecklenburg Board of Education*, supra, at 24, but only a right to attend a unitary school system." *Bradley* v *Richmond*,____ F2d____(CA 4, June 5, 1972).

The matter of the scope of judicial remedy in school desegregation cases is one of national concern. The public is acutely aware of the varying Court decisions in this area and the divergent and conflicting decisions of the lower courts have created much confusion and engendered tremendous emotional reactions from all segments of the public. The decision of the Court of Appeals in *Bradley* v *Richmond, supra,* is diametrically opposed to the Ruling and Order of the District Court in the instant case.

Our democratic form of government is founded upon obedience to the rule of law. But what is the rule of law in cases such as the instant one? Only a decision by this Court will resolve the question. The magnitude of such question and its impact upon the lives of millions of children and parents cries out for an immediate review and determination by this Court.

CONCLUSION

For the reasons hereinbefore set forth, and those explicated in Respondents' initial brief, this Court should grant the

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit, to the end that immediate and final direction may be had with respect to the appropriate scope of judicial remedy in school desegregation cases.

Respectfully submitted,

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